

## Sgt. Arley Flaherty

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<p style="text-align: center;">1</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION CASE NO.: 1:22-cv-21004-DPG</p> <p>JESSICA GUASTO, PLAINTIFF, VS. THE CITY OF MIAMI BEACH, FL, A FLORIDA MUNICIPALITY, DEFENDANT.</p> <hr/> <p>DEPOSITION OF: SGT. ARLEY FLAHERTY</p> <p>DATE: MARCH 28, 2024</p> <p>TIME: 9:15 A.M. - 10:12 A.M.</p> <p>PLACE: VIA ZOOM REMOTE CONFERENCING</p> <p>REPORTED BY: TIMOFEY GARBUZ COURT REPORTER NOTARY PUBLIC, STATE OF FLORIDA</p>	<p style="text-align: center;">2</p> <p>1 APPEARANCES: 2 DANIEL B. BARROUKH, ESQ. DEREK SMITH LAW GROUP, PLLC 3 520 BRICKELL KEY DRIVE SUITE O-301 4 MIAMI, FLORIDA 33131-2433 (786) 688-2335 5 DANIELB@DEREKSMITHLAW.COM COUNSEL APPEARING ON BEHALF OF THE PLAINTIFF. 6 7 8 MICHAEL L. ELKINS, ESQ. MLE LAW 9 1212 NORTHEAST 16TH TERRACE FORT LAUDERDALE, FLORIDA 33304 10 (954) 401-2608 MELKINS@MLELAWFIRM.COM 11 COUNSEL APPEARING ON BEHALF OF THE DEFENDANT. 12 13 14 * * * * * 15 S T I P U L A T I O N S 16 17 It is hereby stipulated and agreed by and 18 between counsel for the respective parties, and the 19 deponent, that the reading and signing of the deposition 20 are hereby reserved. 21 22 23 24 25</p>																																																
<p style="text-align: center;">3</p> <p style="text-align: center;">I N D E X</p> <table border="0"> <tr> <td>2 WITNESS</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>3 SGT. ARLEY FLAHERTY</td> <td></td> </tr> <tr> <td>4 Direct Examination by Mr. Elkins</td> <td style="text-align: right;">4</td> </tr> <tr> <td>5 Cross Examination by Mr. Barroukh</td> <td style="text-align: right;">47</td> </tr> <tr> <td>6 Redirect Examination by Mr. Elkins</td> <td style="text-align: right;">49</td> </tr> <tr> <td>7</td> <td></td> </tr> <tr> <td style="text-align: center;">E X H I B I T S</td> <td></td> </tr> <tr> <td>9 DEPOSITION DESCRIPTION</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>10 Exhibit Number 1 Memorandum from Clements to Guasto</td> <td style="text-align: right;">33</td> </tr> <tr> <td>11</td> <td></td> </tr> <tr> <td>12</td> <td></td> </tr> <tr> <td>13</td> <td></td> </tr> <tr> <td>14</td> <td></td> </tr> <tr> <td>15</td> <td></td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17</td> <td></td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>23</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </table>	2 WITNESS	PAGE	3 SGT. ARLEY FLAHERTY		4 Direct Examination by Mr. Elkins	4	5 Cross Examination by Mr. Barroukh	47	6 Redirect Examination by Mr. Elkins	49	7		E X H I B I T S		9 DEPOSITION DESCRIPTION	PAGE	10 Exhibit Number 1 Memorandum from Clements to Guasto	33	11		12		13		14		15		16		17		18		19		20		21		22		23		24		25		<p style="text-align: center;">4</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p style="text-align: center;">****</p> <p>3 THE REPORTER: Whenever you're ready, Counsel, 4 please state your names and whom you represent for the 5 record. And I'll swear in the witness. 6 MR. ELKINS: I'm ready. 7 THE REPORTER: Go ahead, Counsel. Please state 8 your names and whom you represent for the record. 9 MR. BARROUKH: All right. Daniel Barroukh for the 10 plaintiffs. 11 MR. ELKINS: Michael Elkins on behalf of the 12 defendant, City of Miami Beach. 13 THE REPORTER: Sergeant, do you swear and affirm 14 that the statements you give in this matter shall be 15 the truth, the whole truth and nothing but the truth so 16 help you God? 17 THE WITNESS: I swear. 18 THE REPORTER: We may proceed. 19 SGT. ARLEY FLAHERTY, 20 Having been first duly sworn, testified as follows: 21 DIRECT EXAMINATION 22 BY MR. ELKINS: 23 Q. One second. 24 Okay. Good morning, Sergeant Flaherty. 25 A. Good morning.</p>
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<p style="text-align: right;">5</p> <p>1 <b>Q. How are you today?</b>  2 A. I'm fine. A little tired. Worked last night.  3 <b>Q. I appreciate your time in being here.</b>  4 <b>Can you just state your full name for the record,</b>  5 <b>please.</b>  6 A. Sure. It's Arley Flaherty, A-r-l-e-y. And last  7 name is F-l-a-h-e-r-t-y.  8 <b>Q. And where are you currently employed?</b>  9 A. The Miami Beach Police Department.  10 <b>Q. How long have you worked there?</b>  11 A. February of this year made 20 years.  12 <b>Q. Have you ever been deposed before?</b>  13 A. Yes, I have.  14 <b>Q. On how many times?</b>  15 A. Many.  16 <b>Q. Enumerable, right?</b>  17 A. Yes, yes.  18 <b>Q. Let me ask a different question. Maybe it will be</b>  19 <b>a little bit clearer. Have you ever been deposed in a civil</b>  20 <b>case?</b>  21 A. You know, I don't recall right now.  22 <b>Q. Okay. So I presume you've been deposed, like I</b>  23 <b>said, enumerable times in criminal cases --</b>  24 A. Yes.  25 <b>Q. -- and probably in court for testimony. So this</b></p>	<p style="text-align: right;">6</p> <p>1 is a little bit different. So I'm going to go over just a  2 few real simple ground rules that will hopefully allow us to  3 get you out of here as quickly as humanly possible, okay?  4 A. Okay.  5 <b>Q. First thing is: We have our court reporter here,</b>  6 <b>Tim, who is taking down everything we say. But as great as</b>  7 <b>Tim is, he cannot accurately transcribe two people talking</b>  8 <b>at the same time.</b>  9 <b>And so, while you're probably going to anticipate</b>  10 <b>a lot of my questions and be able to answer them quickly, I</b>  11 <b>just ask that you kind of hold your breath, let me finish</b>  12 <b>the question, and then answer it. Otherwise, our court</b>  13 <b>reporter is going to struggle all day.</b>  14 A. Okay.  15 <b>Q. Does that make sense?</b>  16 A. Yes.  17 <b>Q. All right. Second -- I forgot what I was going to</b>  18 <b>say there for a second.</b>  19 <b>The court reporter is taking down everything we</b>  20 <b>say. This isn't a video deposition, so you have to give</b>  21 <b>audible answers. You can't, like, nod your head or give ums</b>  22 <b>and ahs; do you understand that?</b>  23 A. Yes, I do.  24 <b>Q. All right. If at any time you don't understand my</b>  25 <b>question, you're free to ask me to repeat it, to clarify it.</b></p>
<p style="text-align: right;">7</p> <p>1 <b>And if you need a break at any time, that's fine. I just</b>  2 <b>ask that you not take a break while a question is pending.</b>  3 <b>Does that make sense?</b>  4 A. Yes.  5 <b>Q. Okay. Perfect.</b>  6 <b>And obviously, I'm asking you questions based on</b>  7 <b>your personal knowledge today. So unless I actually ask you</b>  8 <b>to kind of give me an approximation or to guess, I don't</b>  9 <b>want you to guess unless specifically asked to do so. Do</b>  10 <b>you understand that?</b>  11 A. I understand.  12 <b>Q. Okay. First thing is: Did you and I speak at any</b>  13 <b>point before this deposition?</b>  14 A. Yes, we did.  15 <b>Q. When did we speak?</b>  16 A. Last week.  17 <b>Q. Okay. And what did we talk about?</b>  18 A. About the case.  19 <b>Q. Okay. And did I talk to you about the allegations</b>  20 <b>in Ms. Guasto's complaint?</b>  21 A. Yes, you did.  22 <b>Q. Did I ask you to testify in any specific way?</b>  23 A. No.  24 <b>Q. Okay. Did I tell you that it was important to</b>  25 <b>tell the truth?</b></p>	<p style="text-align: right;">8</p> <p>1 A. Yes.  2 <b>Q. Okay. Understanding you are not a management</b>  3 <b>employee, correct?</b>  4 A. I am not.  5 <b>Q. Are you a member of the FOP?</b>  6 A. I am a member, but can you -- is it -- are you  7 asking if I'm executive or just an actual member?  8 <b>Q. First, I'm asking if you're a member?</b>  9 A. I am.  10 <b>Q. Okay. And what is the FOP?</b>  11 A. It is the union that represents the police  12 department, police officers.  13 <b>Q. City of Miami Beach Police Department is unionized</b>  14 <b>through the Fraternal Order of Police, correct?</b>  15 A. Yes, it is, yes.  16 <b>Q. I think Lodge Number 48; is that right?</b>  17 A. We are 6.  18 <b>Q. Right. Forty-eight, six, same thing. Strike</b>  19 <b>that.</b>  20 <b>And we'll get back to that in a moment.</b>  21 <b>How long -- and you said you've been employed with</b>  22 <b>the City in the police department for 20 years -- 20-plus</b>  23 <b>years?</b>  24 A. Twenty years.  25 <b>Q. Okay. Can you just give us a brief description or</b></p>

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<p style="text-align: right;">9</p> <p>1 <b>a history of your employment at the police department?</b></p> <p>2 A. Yes. I started off as a regular patrol. I then</p> <p>3 did a bike -- bike unit. After that, for about nine years,</p> <p>4 I was part of our vice squad at the time that did narcotics,</p> <p>5 prostitution, human trafficking, a little bit of everything.</p> <p>6 I was -- during that time I was also detached to a money</p> <p>7 laundering task with the State Attorney's Office.</p> <p>8 Once I got promoted, I went back to the road. I</p> <p>9 then went for about two to three years to what we call</p> <p>10 RDAing, our -- our re -- it's like an area that's re --</p> <p>11 we're grants. It's a CityCenter if you're familiar with</p> <p>12 that, where the courthouse is, and it's just a specialized</p> <p>13 unit.</p> <p>14 And then for the last six years, four to five --</p> <p>15 actually, five years, I've been part of the -- I am the</p> <p>16 background unit and recruitment supervisor.</p> <p>17 <b>Q. When were you promoted to sergeant?</b></p> <p>18 A. I was promoted in August of 2015.</p> <p>19 <b>Q. And then, the hierarchy of the police department</b></p> <p>20 <b>as I understand it runs, generally speaking, sometimes</b></p> <p>21 <b>there's some changes depending upon at the top, but</b></p> <p>22 <b>generally runs Chief of Police at the top, sometimes there's</b></p> <p>23 <b>an Assistant Chief, sometimes there isn't, it just depends.</b></p> <p>24 <b>Right?</b></p> <p>25 A. That's --</p>	<p style="text-align: right;">10</p> <p>1 <b>Q. Is that correct so far?</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. And then, below it, Assistant Chief would be your</b></p> <p>4 <b>Majors, correct?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And then, Captain below that; is that right?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. And then, Lieutenant, correct?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. Then Sergeant, right?</b></p> <p>11 A. Yes, yes.</p> <p>12 <b>Q. And then, Police Officer?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. Then within Police Officer, Sergeant or</b></p> <p>15 <b>Lieutenant, generally speaking, there are different</b></p> <p>16 <b>detachments or duties or assignments, so you could be, for</b></p> <p>17 <b>example, a Sergeant, but in the motors unit or a police</b></p> <p>18 <b>officer who is a detective also; is that right, things like</b></p> <p>19 <b>that?</b></p> <p>20 A. Correct. That's correct.</p> <p>21 <b>Q. And it's my understanding -- correct me if I'm</b></p> <p>22 <b>wrong -- that the FOP bargaining unit, the employees within</b></p> <p>23 <b>that unit consists of police officers or police employees</b></p> <p>24 <b>that are sworn that are the rank of Lieutenant and below; is</b></p> <p>25 <b>that right?</b></p>
<p style="text-align: right;">11</p> <p>1 A. That's correct.</p> <p>2 <b>Q. The management employees are Captain and above; is</b></p> <p>3 <b>that right?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Okay. Perfect.</b></p> <p>6 <b>Tell me about -- what is your current role within</b></p> <p>7 <b>the FOP?</b></p> <p>8 A. I currently am just a member.</p> <p>9 <b>Q. Okay. And -- but previous you were part of the</b></p> <p>10 <b>executive board or committee?</b></p> <p>11 A. I was. I was part of the executive board in two</p> <p>12 different capacities.</p> <p>13 <b>Q. Okay. What were those capacities?</b></p> <p>14 A. I first was a Trustee. And then, my last was -- I</p> <p>15 was a First Vice President.</p> <p>16 <b>Q. So let's start with when were you a Trustee. And</b></p> <p>17 <b>what is a Trustee?</b></p> <p>18 A. I -- I do not recall the years back when I was a</p> <p>19 Trustee. Pretty much, it's just to make sure that</p> <p>20 everything within the union is going how it's supposed to</p> <p>21 be. We usually review the -- the by-laws. We review the</p> <p>22 financial statements. We just ensure that everything is up</p> <p>23 to date and that the lodge is running how it's supposed to</p> <p>24 be running. There's three of us.</p> <p>25 <b>Q. By "lodge," you mean the local unions, correct?</b></p>	<p style="text-align: right;">12</p> <p>1 A. Correct, correct.</p> <p>2 <b>Q. And then, what was your other role?</b></p> <p>3 A. And then, I was the First Vice President.</p> <p>4 <b>Q. And when were you the First Vice President?</b></p> <p>5 A. I was the First Vice President. So there is a</p> <p>6 term going on right now. This one, he is -- what year? We</p> <p>7 are in 2024? So he was 2022. So I was from -- it's a</p> <p>8 two-year term. So I want to say I was -- prior to this one,</p> <p>9 so 20 -- 2021 to 20 -- 2020 to 2022. That was my term, the</p> <p>10 two-year term.</p> <p>11 <b>Q. And the title was First Vice President?</b></p> <p>12 A. Yes, it's President, First Vice President, then</p> <p>13 Second Vice President.</p> <p>14 <b>Q. So can you describe for me the internal</b></p> <p>15 <b>organizational structure of the FOP? I think you kind of</b></p> <p>16 <b>just did a little bit, but give me the full picture.</b></p> <p>17 A. Yes. Shame on me, I don't remember everybody's</p> <p>18 position. But it's President, First Vice President, Second</p> <p>19 Vice President. We have a Treasurer, a Secretary, Inner</p> <p>20 Guard, Outer Guard, Sergeant-at-Arms and a Chaplain and the</p> <p>21 three Trustees.</p> <p>22 <b>Q. And generally speaking, what's the role of the FOP</b></p> <p>23 <b>in the context of how it relates to the City, to management,</b></p> <p>24 <b>and to disciplinary issues with employees?</b></p> <p>25 A. They obviously represent the employee when any</p>

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<p style="text-align: right;">13</p> <p>1 type of discipline is set forth. Anything that may go  2 against our contract that might be in a violation or  3 something usually FOP is there to represent the -- the  4 member.  5 <b>Q. And by "contract," you're referring to the</b>  6 <b>Collective Bargaining Agreement; is that correct?</b>  7 A. That's correct.  8 <b>Q. And the Collective Bargaining Agreement confers</b>  9 <b>certain rights to the bargaining unit employees, correct?</b>  10 A. That's correct.  11 <b>Q. And that's an agreement that's bargained between</b>  12 <b>the City's management and the union; is that right?</b>  13 A. That's correct.  14 <b>Q. Within that agreement I believe there is a</b>  15 <b>grievance procedure; is that right?</b>  16 A. There is. There is a grievance committee within  17 the FOP.  18 <b>Q. What is the grievance committee?</b>  19 A. So the grievance committee consists of three  20 members. It's usually -- it's usually from the executive  21 board unless the President and First Vice President decide  22 to bring in, like, a -- a member that's not part of the  23 executive board, just somebody who may have knowledge or  24 something or shows interest.  25 I've been a member of the grievance committee.</p>	<p style="text-align: right;">14</p> <p>1 It's -- like I said, it's three members that are -- are  2 picked. And they're the ones who help with the grievances  3 that the officer wants to file.  4 <b>Q. Does the grievance committee review potential</b>  5 <b>officer grievances to determine if they have merit or not?</b>  6 A. Yes, they do.  7 <b>Q. Okay. Tell me about that process in general.</b>  8 <b>What does that look like?</b>  9 A. So usually, the officer will bring whatever, if  10 it's -- if it's a disciplinary matter, they will bring  11 whatever the discipline was. If they feel that it was done  12 unjust, they may have proof or something. An example would  13 be maybe time away or -- or court -- something -- missing  14 court or something. They could show that they were in  15 court, but maybe the check-in wasn't properly, you know,  16 functioning that day, you know, especially like during  17 COVID.  18 So they may have gotten written up for missing a  19 certain amount of court time. And they'll show the proof.  20 And -- and, you know, we'll -- we'll just try to take it up  21 to the -- it will first go to the level of here, the Chief,  22 show them the proof, and -- you know, it could -- it could  23 be resolved before it goes over to human resources.  24 <b>Q. Got it. But at the end of the day, does the</b>  25 <b>grievance committee generally make a determination as to</b></p>
<p style="text-align: right;">15</p> <p>1 <b>whether a grievance has some initial merit in order to go</b>  2 <b>forward?</b>  3 A. Yes, it does.  4 <b>Q. One second.</b>  5 <b>And does the Collective Bargaining Agreement talk</b>  6 <b>about something called, "just cause," if you recall?</b>  7 A. I don't recall.  8 <b>Q. Okay. But within the Collective Bargaining</b>  9 <b>Agreement, it deals with whether or not an officer can be</b>  10 <b>terminated or disciplined and what the standard is for that,</b>  11 <b>correct?</b>  12 A. Yes, yes.  13 <b>Q. Have you been involved with or are you aware of</b>  14 <b>occasions where officers give up some of their rights under</b>  15 <b>the Collective Bargaining Agreement?</b>  16 A. Yes.  17 <b>Q. And that could happen sometimes through something</b>  18 <b>called a "Last Chance Agreement," right?</b>  19 A. That's correct.  20 <b>Q. Are you familiar with Last Chance Agreements?</b>  21 A. I have been, yes.  22 <b>Q. Okay. Can you talk about your familiarity with</b>  23 <b>those agreements?</b>  24 A. I was privy to two -- two cases. And it's pretty  25 much -- it's pretty much what it says, last chance. They're</p>	<p style="text-align: right;">16</p> <p>1 given a last chance based on whatever the -- whatever the --  2 I guess the best word is "allegations" or whatever they were  3 being reprimanded for, they're given a last chance. And if  4 they violate anything, that's it. They have no more  5 chances.  6 <b>Q. And they -- basically, Last Chance Agreements,</b>  7 <b>generally speaking, they waive their rights under the</b>  8 <b>Collective Bargaining Agreement, i.e. just -- the City</b>  9 <b>having to establish just cause and the ability to grieve the</b>  10 <b>discipline, be it a write-up or a termination; is that a</b>  11 <b>fair characterization?</b>  12 A. That is. That is. Pretty much, that's it.  13 <b>Q. You said you were involved in two Last Chance</b>  14 <b>Agreements previously; is that right?</b>  15 A. I was.  16 <b>Q. Were you involved as a representative from the FOP</b>  17 <b>for an employee that was subject to a Last Chance Agreement?</b>  18 A. I was one of the representatives. There's usually  19 a person who will take charge like the -- the Chairman. In  20 that case, we have a Chairman. I forgot to tell you  21 Chairman of the grievance. So I was there as part of the  22 FOP, yes.  23 <b>Q. And does the FOP also have an in-house lawyer?</b>  24 A. We do.  25 <b>Q. Who is that?</b></p>

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<p style="text-align: right;">17</p> <p>1 A. Gene Gibbons and his partner -- I can't 2 remember -- Buschell, I think. 3 <b>Q. Robert Buschell?</b> 4 A. Yes. Those are the -- 5 MR. ELKINS: Tim last name Buschell, 6 B-u-s-c-h-e-l-l. 7 BY MR. ELKINS: 8 <b>Q. But who primarily handles the work for the FOP?</b> 9 <b>Is it Gene or Robert?</b> 10 A. For the most part, it's Gene. If he happens to be 11 dealing with another city, it's Rob. But it's -- it's Gene. 12 <b>Q. Okay. And does Gene generally represent or work</b> 13 <b>with FOP employees on disciplinary matters like Last Chance</b> 14 <b>Agreements?</b> 15 A. Yes, he does. 16 <b>Q. Is he basically the designated FOP lawyer for</b> 17 <b>members of the FOP?</b> 18 A. Yes, he is. 19 <b>Q. Do FOP members, absent their dues -- I understand</b> 20 <b>they have to pay dues. Put the dues aside. Do they have to</b> 21 <b>pay any additional money for Gene's services?</b> 22 A. No. 23 <b>Q. And are FOP members allowed to also hire their own</b> 24 <b>private counsel?</b> 25 A. Yes, they can.</p>	<p style="text-align: right;">18</p> <p>1 <b>Q. In addition to using Gene?</b> 2 A. Yes. 3 <b>Q. Does that happen frequently or do they usually use</b> 4 <b>Gene?</b> 5 A. It's happened. 6 <b>Q. So sometimes an employee could have two lawyers,</b> 7 <b>not one?</b> 8 A. Exactly. 9 <b>Q. Okay. And does Gene generally work with employees</b> 10 <b>relating to the Settlement Agreements and Last Chance</b> 11 <b>Agreements?</b> 12 A. Yes, he does. 13 <b>Q. And have you had experience with that with other</b> 14 <b>employees?</b> 15 A. Where they used Gene for that? 16 <b>Q. Yes.</b> 17 A. Yes. Yes. 18 <b>Q. Okay. Do you know Jessica Guasto, or formerly</b> 19 <b>known as Jessica Salabarría, maybe currently known as</b> 20 <b>Jessica Salabarría. It's unclear to me. Her name changes</b> 21 <b>frequently. But do you know her?</b> 22 A. I do know her. 23 <b>Q. How do you know her?</b> 24 A. She was an employee here on the beach. 25 <b>Q. And did you have an opportunity to interact with</b></p>
<p style="text-align: right;">19</p> <p>1 <b>her while she was an employee at the beach?</b> 2 A. Yes, I did. 3 <b>Q. Can you describe, generally speaking, your</b> 4 <b>interactions or base of knowledge about her?</b> 5 A. It was obviously a -- a fellow officer, then a 6 fellow sergeant. And then, during the -- while she was 7 going through her grievances, I was part of the FOP at that 8 time. 9 <b>Q. Okay. When you refer to "grievances," what are</b> 10 <b>you referring to?</b> 11 A. I know she -- she's had multiple grievances, so I 12 was just aware of them. I may not have been present at all 13 the ones that she had. 14 I also was involved -- they had given her an 15 opportunity at one time to, like, a mentoring program with 16 three other -- with three supervisors. They wanted to have 17 three female supervisors. But it never got to where she was 18 with me. I think she only had one, and then she no longer 19 completed the mentoring program. 20 <b>Q. Well, tell me -- tell me about the mentoring</b> 21 <b>program. What was the basis of that, the genesis of it,</b> 22 <b>when was it?</b> 23 A. This was one of the times that -- or I think the 24 only time -- I don't recall -- when she was no longer a 25 sergeant. I think she got to become a sergeant again and</p>	<p style="text-align: right;">20</p> <p>1 they were giving her the opportunity to be with other 2 sergeants and lieutenants, you know, to maybe guide her. I 3 guess that's what the Chief at the time had in mind. 4 <b>Q. Okay. Who was the chief at the time?</b> 5 A. It was Dan Oats. 6 <b>Q. Okay. So it was the Chief before Chief Clements,</b> 7 <b>correct?</b> 8 A. Correct. 9 <b>Q. And was Dan Oats the Chief at the time that</b> 10 <b>Jessica was promoted to sergeant, and then ultimately</b> 11 <b>demoted, and then reinstated?</b> 12 A. I -- I don't recall. 13 <b>Q. Okay. That's fine.</b> 14 <b>What was your understanding about this mentoring</b> 15 <b>program and how it worked and what was supposed to happen?</b> 16 A. My understanding is that they wanted to give her 17 an opportunity to -- she hadn't been a sergeant for a while, 18 so it was to get, you know, back into the swing of things. 19 And -- and they wanted her, I guess, you know, with a female 20 maybe so she felt more comfortable is what they had told me. 21 But like I said, she never got to shadow me. I 22 guess that would be the best word. And it was going to be 23 three females, but it never got to that. 24 <b>Q. Well, what did it ultimately get to?</b> 25 A. If I recall, she left to rehab.</p>



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<p style="text-align: right;">21</p> <p>1 <b>Q. She left to where?</b>  2 A. Rehab.  3 <b>Q. What kind of rehab?</b>  4 A. I don't necessarily -- I'm not sure what it is.  5 I'm going by hearsay.  6 <b>Q. Okay. Well, based on hear -- what did you hear</b>  7 <b>about the rehab?</b>  8 A. Sex rehab.  9 <b>Q. For sex addiction?</b>  10 A. Yes.  11 <b>Q. Okay. Is that common knowledge in the police</b>  12 <b>department that you're aware of?</b>  13 A. About a sex rehab or for her in particular?  14 <b>Q. Of Jessica in general.</b>  15 A. Yes.  16 <b>Q. And do you know why she had to go to sex rehab?</b>  17 A. I don't know if she elected or they told her.  18 It's just, she had a reputation in the department, I guess.  19 <b>Q. What was her reputation?</b>  20 A. That she had multiple partners here.  21 <b>Q. Multiple as in many?</b>  22 A. Yes.  23 <b>Q. And was that a reputation amongst non-management</b>  24 <b>employees, i.e. employees of the rank of lieutenant and</b>  25 <b>below, which you of course are?</b></p>	<p style="text-align: right;">22</p> <p>1 A. Yes, everyone.  2 MR. BARROUKH: Objection to form.  3 BY MR. ELKINS:  4 <b>Q. You can answer the question. You may hear</b>  5 <b>opposing counsel object to form. That's fine. You can --</b>  6 <b>you can still answer the question. I'll rephrase the</b>  7 <b>question.</b>  8 <b>Based upon your knowledge, was that reputation</b>  9 <b>known amongst non-management employees, i.e. the rank of</b>  10 <b>lieutenant and below?</b>  11 A. Yes, everyone.  12 <b>Q. And what is your -- what is your understanding of</b>  13 <b>the basis for that reputation?</b>  14 A. Can you be a little bit -- I'm not sure what  15 you're asking.  16 <b>Q. What is your understanding of how Jessica earned</b>  17 <b>that reputation?</b>  18 A. That she was sleeping around with multiple people  19 in the organization.  20 <b>Q. Okay. Are you aware of her podcasts that she had</b>  21 <b>regarding her particular relationships?</b>  22 A. I did see one that they showed me.  23 <b>Q. Okay. Well, first of all, who is "they"?</b>  24 A. Just, it was officers that happened to have seen  25 it in my unit and they just showed it to me.</p>
<p style="text-align: right;">23</p> <p>1 <b>Q. You mean heard it. Because it was a podcast?</b>  2 A. Correct.  3 <b>Q. Okay. And what did you hear on the podcast?</b>  4 A. It was just --  5 MR. BARROUKH: Object. Form.  6 THE WITNESS: -- women talking. I think that day  7 they were talking about the beach, if I'm -- if I'm not  8 mistaken.  9 BY MR. ELKINS:  10 <b>Q. "They," being her and her then boyfriend/future</b>  11 <b>husband/now ex-husband, Nicholas Guasto?</b>  12 A. It was Nicholas, yes, her and Nicholas. It was  13 like a type of talking back and forth.  14 <b>Q. On a podcast that the world could hear?</b>  15 A. Correct.  16 <b>Q. And they were talking about City of Miami Beach</b>  17 <b>and the police department, correct?</b>  18 A. That particular day I only heard -- they were  19 talking about something with the beach.  20 <b>Q. But you don't remember the details of it?</b>  21 A. No, sir.  22 <b>Q. Did you ever have an occasion to supervise</b>  23 <b>Jessica?</b>  24 A. I did not.  25 <b>Q. Are you familiar with the relationship between</b></p>	<p style="text-align: right;">24</p> <p>1 <b>Jessica and Lieutenant Steven Cosner?</b>  2 A. Yes.  3 <b>Q. And what is your understanding based on your</b>  4 <b>knowledge of that relationship?</b>  5 A. It -- it -- once again, it's -- it was hearsay  6 that they were together, they were always seen together,  7 riding together, so it was common knowledge that they were  8 together.  9 <b>Q. And by common knowledge that they were together,</b>  10 <b>do you mean common knowledge that they were sleeping</b>  11 <b>together?</b>  12 A. It was -- it was said that they were a couple,  13 yes.  14 <b>Q. And this goes back to approximately, like, 2014 or</b>  15 <b>'15; does that sound about right, or maybe longer even?</b>  16 A. I -- I don't recall the -- the time.  17 <b>Q. Do you have any information about how that</b>  18 <b>relationship ended or why it ended?</b>  19 A. No, I don't.  20 <b>Q. Do you have any information or knowledge about the</b>  21 <b>other people in the department that Jessica has slept with?</b>  22 A. A few.  23 <b>Q. Okay. What information do you have on that?</b>  24 A. You just have the typical guy who either said  25 he -- you know, he was with her one time or you have the</p>

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<p style="text-align: right;">25</p> <p>1 ones who knew about somebody else. You have the ones that  2 say why certain officers left was because of their  3 relationship with Jessica, so --  4 <b>Q. Do you have information about officers who left</b>  5 <b>the City of Miami Beach due to their relationship with</b>  6 <b>Jessica?</b>  7 A. That was what was said, that the officers who left  8 were because the relationship they had with her.  9 <b>Q. What specific information do you have on that?</b>  10 A. Either that their wives had caught them or they  11 themselves got jammed up here, things like that.  12 <b>Q. Do you remember approximately how many officers</b>  13 <b>that was that you were aware of?</b>  14 A. That left? I could only recall two.  15 <b>Q. And who were they?</b>  16 A. I only know one's name, which was Estevez. I  17 don't recall the other one's name.  18 <b>Q. Do you know Estevez's full name?</b>  19 A. I can't remember right now.  20 <b>Q. Did you ever -- have you ever had any personal</b>  21 <b>issues -- any issues between you and Jessica directly?</b>  22 A. I -- I haven't, but it was told to me she didn't  23 care for me, so --  24 <b>Q. Who told you that?</b>  25 A. Huh?</p>	<p style="text-align: right;">26</p> <p>1 <b>Q. Who told you that?</b>  2 A. Just, for example, the times when I would try to  3 go, you know, represent her, because I was FOP, it would be,  4 you know, either the President would tell me, hey, she said  5 she doesn't want you in there, but I had to be in there. I  6 mean, I was part of the grievance committee. I was part of  7 the board.  8 <b>Q. Are you -- are you referring to the January 2021</b>  9 <b>meeting --</b>  10 A. Yes.  11 <b>Q. -- with Chief Clements?</b>  12 A. Yes.  13 <b>Q. Okay. We are going to get to that --</b>  14 A. Oh, okay.  15 <b>Q. We are going to get to that pretty shortly here.</b>  16 <b>Because again, I don't want to keep you too long.</b>  17 A. Okay.  18 <b>Q. So we are going to get to that.</b>  19 <b>But other than that January meeting, did you have</b>  20 <b>any other occasion to represent Jessica as a member of the</b>  21 <b>FOP?</b>  22 A. No.  23 <b>Q. And you never supervised her?</b>  24 A. I did not supervise her.  25 <b>Q. So you never issued any discipline to her?</b></p>
<p style="text-align: right;">27</p> <p>1 A. I have not issued any discipline to her.  2 <b>Q. And just to button that up, you've never written</b>  3 <b>her up, given her a verbal reprimand, recommend her for</b>  4 <b>suspension, recommended her for termination, nothing like</b>  5 <b>that?</b>  6 A. No, I have not.  7 <b>Q. Never done a personnel -- never done an evaluation</b>  8 <b>on her, correct?</b>  9 A. No.  10 <b>Q. You've never had any input into an evaluation -- a</b>  11 <b>personnel evaluation?</b>  12 A. No.  13 <b>Q. Have you ever had -- excluding January 2021, have</b>  14 <b>you ever had any input into any other discipline with her</b>  15 <b>prior to January 2021?</b>  16 A. Like I said, she had other grievances. I was  17 aware of them, but it was just discussed within the  18 grievance committee. It's not like I had any decisions. It  19 was amongst everybody.  20 <b>Q. And in the past, prior to January 2021, have the</b>  21 <b>FOP ever denied a grievance for Jessica; in other words,</b>  22 <b>refused to bring her grievances forward?</b>  23 A. Not that I'm aware of.  24 <b>Q. Okay. So let's talk about January of 2021. So</b>  25 <b>you were -- you were part of a meeting, I believe that</b></p>	<p style="text-align: right;">28</p> <p>1 <b>occurred on -- let me double-check this. January -- hold</b>  2 <b>on. Nineteenth. Do you recall that? January 19th, 2021.</b>  3 <b>It was a meeting where Wayne was there, the Chief, Paul,</b>  4 <b>Reggie, Eldon, Cosner. Do you recall that meeting?</b>  5 A. I -- is that the last chance meeting?  6 <b>Q. We can call it the last chance meeting, sure.</b>  7 A. Yes, I was there.  8 <b>Q. Give me -- I just need to change the labels on a</b>  9 <b>few things here. One second. All right.</b>  10 <b>Well, first of all, before we get to that, how did</b>  11 <b>it -- how did it come up that you were at that meeting?</b>  12 A. So for two reasons: One, because I was the Vice  13 President at the time, I -- I -- what year was it?  14 <b>Q. 2021.</b>  15 A. Yes. So I was Vice President. But we also made  16 sure that if -- and not just for her, if there was a female  17 involved in any type of grievance or any type of meeting,  18 just so they could feel comfortable, we felt that it was,  19 you know, to have another female in there with them, so --  20 <b>Q. Now, prior to this January 2021 meeting, did you</b>  21 <b>have any involvement with Jessica in any of her other</b>  22 <b>grievances other than being on the grievance committee?</b>  23 A. Yeah, that was it.  24 <b>Q. Okay. So this 2021 meeting, this was your first,</b>  25 <b>we'll call it "foray" into any of the issues that Jessica</b></p>

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<p style="text-align: right;">29</p> <p>1 was having with the police department at that time, correct?</p> <p>2 A. That I was present. Because I was obviously aware</p> <p>3 of all her other ones. I was present at this one.</p> <p>4 <b>Q. Were you and the other FOP members called to Chief</b></p> <p>5 <b>Clements' office in advance of the meeting with Jessica?</b></p> <p>6 A. Yes, we did go before.</p> <p>7 <b>Q. Okay. And did you have -- did you and other FOP</b></p> <p>8 <b>grievance committee members and the President, did you have</b></p> <p>9 <b>a chance to talk to the Chief before the meeting?</b></p> <p>10 A. Yes, we did.</p> <p>11 MR. BARROUKH: Objection. Form.</p> <p>12 MR. ELKINS: What's the form objection with that</p> <p>13 question? I asked her if they had a chance to talk to</p> <p>14 the Chief. What's the form problem with that question?</p> <p>15 MR. BARROUKH: Are you asking --</p> <p>16 MR. ELKINS: I didn't ask what they said. I just</p> <p>17 asked her based on her knowledge, did they have a</p> <p>18 conversation with the Chief before the -- before the</p> <p>19 meeting. What's the form issue with that question?</p> <p>20 MR. BARROUKH: I believe it's vague as to asking</p> <p>21 if they spoke with the Chief separately from her --</p> <p>22 from Sergeant Flaherty there as well as speaking with</p> <p>23 Sergeant Flaherty there.</p> <p>24 MR. ELKINS: That's nonsense. I asked her if her</p> <p>25 and the FOP collectively had a chance to speak with the</p>	<p style="text-align: right;">30</p> <p>1 Chief. So again, I ask, what's the form issue? Is it</p> <p>2 a compound question?</p> <p>3 MR. BARROUKH: I stated the form issue is vague.</p> <p>4 MR. ELKINS: Okay.</p> <p>5 MR. BARROUKH: The question was vague.</p> <p>6 BY MR. ELKINS:</p> <p>7 <b>Q. The question is the same. You can answer it. Did</b></p> <p>8 <b>you and/or the FOP grievance committee members have an</b></p> <p>9 <b>occasion to talk to the Chief in advance on the day of this</b></p> <p>10 <b>January 19th, 2021 meeting?</b></p> <p>11 A. Yes, we did.</p> <p>12 <b>Q. What did you guys talk about?</b></p> <p>13 A. He just advised about how she had violated the --</p> <p>14 the Last Chance Agreement and that they were going to bring</p> <p>15 her up so that she was told.</p> <p>16 <b>Q. Did he tell you that any decisions had been made</b></p> <p>17 <b>with respect to her prior to the meeting?</b></p> <p>18 A. Yes, that she was going to be terminated because</p> <p>19 of the Last Chance Agreement that she violated.</p> <p>20 <b>Q. Okay. Did he ask you whether you agreed with the</b></p> <p>21 <b>termination or not, or did he indicate that, you know, you</b></p> <p>22 <b>were being called in there to represent her?</b></p> <p>23 A. We were there to represent us, so that's why he</p> <p>24 had us there.</p> <p>25 <b>Q. Okay. So the Chief had told you in advance of the</b></p>
<p style="text-align: right;">31</p> <p>1 <b>January 19, 2021 meeting that it was his belief she violated</b></p> <p>2 <b>her Last Chance Agreement, and so she was going to be</b></p> <p>3 <b>terminated?</b></p> <p>4 A. Correct.</p> <p>5 <b>Q. But was he going to give her a chance to explain</b></p> <p>6 <b>herself prior to the termination?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Do you know if the Chief was required to even give</b></p> <p>9 <b>her a chance to explain herself given the Last Chance</b></p> <p>10 <b>Agreement?</b></p> <p>11 A. No, he's not.</p> <p>12 <b>Q. He could have just fired her without any</b></p> <p>13 <b>explanation from her, correct?</b></p> <p>14 A. Correct.</p> <p>15 <b>Q. She was effectively an employee-at-will at that</b></p> <p>16 <b>point, correct?</b></p> <p>17 A. Yes, she was. Yes.</p> <p>18 <b>Q. Was the Chief doing her, like, a favor by asking</b></p> <p>19 <b>-- by trying to get an explanation from her?</b></p> <p>20 A. I wouldn't be able to tell you. I would imagine.</p> <p>21 <b>Q. Okay. But at that time, the FOP -- you and your</b></p> <p>22 <b>fellow FOP grievance committee members, including the</b></p> <p>23 <b>President, the First Vice President and the Second Vice</b></p> <p>24 <b>President, all were present and the Grievance Chair -- you</b></p> <p>25 <b>were the First Vice President at the time -- you were all</b></p>	<p style="text-align: right;">32</p> <p>1 <b>aware of the Last Chance Agreement, correct?</b></p> <p>2 A. Yes, we were.</p> <p>3 <b>Q. You were aware that the Chief had no obligation to</b></p> <p>4 <b>talk to her before terminating her?</b></p> <p>5 A. Correct.</p> <p>6 <b>Q. Okay. Is it common that sometimes prior to a</b></p> <p>7 <b>meeting with the bargaining unit member, that the union</b></p> <p>8 <b>representatives will be called to go to the supervisor</b></p> <p>9 <b>before the meeting? Does that happen?</b></p> <p>10 A. I didn't understand what you said. I'm sorry.</p> <p>11 <b>Q. Yeah, that's fine. So you and your fellow FOP</b></p> <p>12 <b>members were with the Chief before the meeting, correct?</b></p> <p>13 A. Correct.</p> <p>14 <b>Q. That -- in terms of other meetings, other</b></p> <p>15 <b>disciplinary matters, is it common that sometimes the FOP</b></p> <p>16 <b>representatives will be at the meeting before the rank and</b></p> <p>17 <b>file employee, like, in advance?</b></p> <p>18 A. Yes, yes. Yes, it is.</p> <p>19 <b>Q. And is that because the City sometimes has to have</b></p> <p>20 <b>the meeting quickly --</b></p> <p>21 <b>Sorry, my dog's barking in the background.</b></p> <p>22 <b>-- that sometimes the City has to do the meeting</b></p> <p>23 <b>quickly; and so, they'll -- they want to have a</b></p> <p>24 <b>representative present before the employee shows up?</b></p> <p>25 A. Yes. It could be for that or, you know, let us</p>



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<p style="text-align: right;">33</p> <p>1 know so we could speak to her or him or whatever the 2 situation is before.</p> <p>3 <b>Q. And also, to generally avoid any opportunity for 4 management to question an employee or even look like they're 5 talking to an employee without their representative?</b></p> <p>6 A. Absolutely.</p> <p>7 <b>Q. So if the FOP representatives are present before 8 the meeting starts, that solidifies that there was never any 9 contact between management and rank and file in a 10 disciplinary meeting before then?</b></p> <p>11 A. Correct.</p> <p>12 <b>Q. Before the meeting?</b></p> <p>13 A. Correct.</p> <p>14 <b>Q. Okay. So I'm going to show you what I'm going to 15 mark as Exhibit 1.</b></p> <p>16 <b>(Deposition Exhibit Number 1 marked for 17 identification.)</b></p> <p>18 BY MR. ELKINS:</p> <p>19 <b>Q. Are you able to see this document?</b></p> <p>20 A. I can.</p> <p>21 <b>Q. Okay. Give me one second. Okay. So this is a 22 memorandum written to Jessica from Chief Clements. Have you 23 ever seen this before?</b></p> <p>24 A. I probably did see it that day. I just don't 25 recall it right now.</p>	<p style="text-align: right;">34</p> <p>1 <b>Q. Okay. And this outlines essentially what happened 2 in this meeting and who was present?</b></p> <p>3 A. Correct.</p> <p>4 <b>Q. Okay. So the first thing I want to do is talk 5 about who was present at the meeting. It says here on 6 January 19th, 2021, I held a meeting with you to discuss the 7 allegations in the AEM.</b></p> <p>8 <b>That's the Allegation of Employee Misconduct filed 9 by Steven Cosner, which I presume you're familiar with?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. Had you read that prior to the meeting?</b></p> <p>12 A. I had.</p> <p>13 <b>Q. Okay. And it says: Present at the meeting was 14 Wayne Jones, who was at the time the Deputy Chief, Paul 15 Ozaeta, who was at the time the FOP President, who was the 16 Lieutenant, you, the FOP First Vice President, Reggie 17 Lester, the Second Vice President, Doug Brown, who is now a 18 Captain, but at the time was the Grievance Chair, Cosner -- 19 Lieutenant Cosner, and A.J. Prieto, who at the time was the 20 Captain of Internal Affairs. Do you see that?</b></p> <p>21 A. Yes, I do.</p> <p>22 <b>Q. Is that an accurate list of who was present at the 23 meeting?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. Let me ask you this: Do bargaining unit employees</b></p>
<p style="text-align: right;">35</p> <p>1 <b>ordinarily have the FOP President, First Vice President, 2 Second Vice President and Grievance Chairman at their 3 meetings with management regarding discipline? Is that 4 normal?</b></p> <p>5 A. So, like I said, it could have been done just with 6 the Second Vice President or just with me. But I -- I was 7 -- I was the female involved, you know, to give her a sense 8 of -- of comfort. And I do not recall if I was on the 9 grievance committee at the time or it was Reggie Lester. 10 That's why maybe he was there. Definitely you needed the 11 Chairman of the grievance committee because he was the one 12 involved with the grievance.</p> <p>13 But yeah, it could be -- it could be the whole 14 executive board or it could be three of us. It's -- it's 15 never been, you know, an issue.</p> <p>16 <b>Q. But is it common that a rank and file employee 17 would have the entire executive board of the FOP present for 18 a disciplinary meeting? Is that normal or is that unique 19 based on your experience?</b></p> <p>20 A. It -- it could happen.</p> <p>21 <b>Q. Okay. Is it fair to say, though, that Jessica was 22 represented during this meeting?</b></p> <p>23 A. She was very represented.</p> <p>24 <b>Q. Okay. At any point in time in the meeting, do you 25 recall Jessica saying that she wanted an attorney there?</b></p>	<p style="text-align: right;">36</p> <p>1 A. No.</p> <p>2 <b>Q. Did she request anybody to be there?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. Who did she request to be there?</b></p> <p>5 A. She wanted her then husband/boyfriend, Guasto, to 6 come in with her.</p> <p>7 <b>Q. Nicholas Guasto?</b></p> <p>8 A. Correct.</p> <p>9 <b>Q. And do you remember what his rank was at the time?</b></p> <p>10 A. Officer.</p> <p>11 <b>Q. Okay. So he wasn't a supervisor of any kind?</b></p> <p>12 A. No.</p> <p>13 <b>Q. Did he have any kind of role in the FOP besides 14 being a member?</b></p> <p>15 A. I do not recall if at that time he did or he did 16 not.</p> <p>17 <b>Q. Okay. What was the -- what happened with her 18 request to have her husband present?</b></p> <p>19 A. It was denied.</p> <p>20 <b>Q. Who denied it?</b></p> <p>21 A. The Chief.</p> <p>22 <b>Q. Okay. And did you see any problem? Was there any 23 problem with the Chief denying her request to have her 24 husband there?</b></p> <p>25 A. No.</p>

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10 (Pages 37 to 40)

<p style="text-align: right;">37</p> <p>1 <b>Q. Why not?</b></p> <p>2 A. Because he was also involved in a similar</p> <p>3 allegation, so it would have -- it would have jeopardized</p> <p>4 his grievance at the time.</p> <p>5 <b>Q. I mean, does she generally have a right, though,</b></p> <p>6 <b>to have her husband present at disciplinary meetings in</b></p> <p>7 <b>general?</b></p> <p>8 A. It's never been a common practice, so I wouldn't</p> <p>9 be able to answer. But he -- because he had a similar</p> <p>10 allegation, it just -- it would have been a conflict of</p> <p>11 interest, I guess would be the best word.</p> <p>12 <b>Q. Was the fact that he wasn't there, did that cause</b></p> <p>13 <b>her to have any less representation?</b></p> <p>14 A. Not at all.</p> <p>15 <b>Q. At the end of the day, she still had the</b></p> <p>16 <b>President, the First Vice President, the Second Vice</b></p> <p>17 <b>President and the Grievance Chairman all present, correct?</b></p> <p>18 A. That's correct.</p> <p>19 <b>Q. Plus a female, being you, correct?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. Okay. Was -- at any point in the meeting was</b></p> <p>22 <b>Jessica told by the Chief or anyone else that if she gets up</b></p> <p>23 <b>and leaves, she'll be fired?</b></p> <p>24 A. No.</p> <p>25 <b>Q. What is your recollection of what happened in this</b></p>	<p style="text-align: right;">38</p> <p>1 <b>meeting?</b></p> <p>2 A. My recollection is they went over the -- the</p> <p>3 allegations that had been made by -- the reprimand by</p> <p>4 Lieutenant Cosner at the time. They gave her an opportunity</p> <p>5 to explain; in other words, counter the allegations.</p> <p>6 And then, the next thing I recall is the then</p> <p>7 Internal Affairs commander, which was Prieto, pretty much,</p> <p>8 you know, just went line by line, everything she was</p> <p>9 countering and said, you know, all his proof and his</p> <p>10 findings to -- to show that she was -- she was not being</p> <p>11 truthful.</p> <p>12 <b>Q. Okay. Now, did you have a chance to review any</b></p> <p>13 <b>findings from Captain Prieto or anybody else?</b></p> <p>14 A. I -- I personally don't remember. But I think the</p> <p>15 President did.</p> <p>16 <b>Q. Okay. But did -- did you not look at Cosner's</b></p> <p>17 <b>allegation and -- and what he had alleged and what she had</b></p> <p>18 <b>said and how that played out?</b></p> <p>19 A. Yes, I did -- I did see it.</p> <p>20 <b>Q. What was your conclusion about that, if anything?</b></p> <p>21 A. He had done his homework. He had all his -- he</p> <p>22 had all his backing also, pretty much similar to what the</p> <p>23 Internal Affairs, who has a little bit more access than he</p> <p>24 does, to -- to, like, key cards and entries. But what he</p> <p>25 was capable of -- of finding out himself contradicted what</p>
<p style="text-align: right;">39</p> <p>1 she was alleging that she hadn't done.</p> <p>2 <b>Q. At any point in time in this meeting, did you or</b></p> <p>3 <b>any other member of the FOP tell the City that this was an</b></p> <p>4 <b>improper interrogation under Chapter 112?</b></p> <p>5 A. No.</p> <p>6 <b>Q. I'm sorry?</b></p> <p>7 A. No.</p> <p>8 <b>Q. And do -- do you know if Reggie Lester said that?</b></p> <p>9 A. I don't recall, but no.</p> <p>10 <b>Q. Okay. Did you believe that there was any improper</b></p> <p>11 <b>interrogation going on at this meeting?</b></p> <p>12 A. No, there wasn't.</p> <p>13 <b>Q. If there was an improper interrogation going on,</b></p> <p>14 <b>would you have said something?</b></p> <p>15 A. Absolutely.</p> <p>16 <b>Q. Are you familiar with the Police Officer Bill of</b></p> <p>17 <b>Rights and how Chapter 112 works?</b></p> <p>18 A. As best as I can, yes.</p> <p>19 <b>Q. You're certainly with familiar with the idea that</b></p> <p>20 <b>if an officer is going to be interrogated, there are certain</b></p> <p>21 <b>requirements, correct?</b></p> <p>22 A. Absolutely, yes.</p> <p>23 <b>Q. But in your view, this particular meeting was</b></p> <p>24 <b>because of her Last Chance Agreement, correct?</b></p> <p>25 A. That's correct.</p>	<p style="text-align: right;">40</p> <p>1 <b>Q. This is a meeting that the City didn't even have</b></p> <p>2 <b>to have with her; is that the FOP's viewpoint and yours?</b></p> <p>3 A. You broke up. What was that?</p> <p>4 <b>Q. And this was a meeting that the City didn't even</b></p> <p>5 <b>have to have with her; is that correct?</b></p> <p>6 A. That's correct.</p> <p>7 <b>Q. And are you -- and assuming there was a 112</b></p> <p>8 <b>violation, how would that get dealt with with the FOP?</b></p> <p>9 A. The grievance, they would have stopped the -- the</p> <p>10 interrogation, not the interrogation, the -- the meeting and</p> <p>11 they would have immediately called Gene Gibbons and -- and</p> <p>12 tried, you know, taken care of it.</p> <p>13 <b>Q. Gene Gibbons, being the FOP lawyer, correct?</b></p> <p>14 A. Correct.</p> <p>15 <b>Q. And are you familiar with the administrative</b></p> <p>16 <b>process to resolve alleged 112 violations?</b></p> <p>17 A. I haven't been involved in it, no.</p> <p>18 <b>Q. Okay. Understood.</b></p> <p>19 <b>So the move here for the FOP, be it the President,</b></p> <p>20 <b>First Vice President, Second Vice President or Grievance</b></p> <p>21 <b>Chair would have been to stop the meeting and call Gene</b></p> <p>22 <b>Gibbons?</b></p> <p>23 A. Correct.</p> <p>24 <b>Q. Did anybody do that here?</b></p> <p>25 A. No.</p>

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11 (Pages 41 to 44)

<p style="text-align: right;">41</p> <p>1 <b>Q. At any point in time, did Jessica say in the</b>  2 <b>meeting that she thought this was an improper interrogation?</b>  3 A. No.  4 <b>Q. Okay. Did you ask any questions of anybody in</b>  5 <b>this meeting?</b>  6 A. I did not.  7 <b>Q. You didn't ask any questions of Cosner?</b>  8 A. I asked Cosner a question in the meeting prior to  9 that meeting when we met with the Chief.  10 <b>Q. Before -- before --</b>  11 A. Before we met with -- before we met with -- before  12 we met with Jessica and everybody else.  13 <b>Q. Okay. So let's go back to that. One second.</b>  14 <b>Okay. So let's go back to that.</b>  15 <b>On that same day, which was January 19th, prior to</b>  16 <b>the meeting where Jessica was President -- was present --</b>  17 A. Right.  18 <b>Q. -- you and -- and I believe Paul, Reggie, Delvin</b>  19 <b>-- let me get the other names here -- yeah, Paul, Reggie,</b>  20 <b>and Delvin all met with the Chief and Cosner before the</b>  21 <b>meeting?</b>  22 A. Correct. I -- I don't recall who was in the room  23 at that time. I know it was the Chief, myself, and Cosner.  24 I don't remember if every -- if the other board members had  25 gotten there yet. But I was there, the Chief was there and</p>	<p style="text-align: right;">42</p> <p>1 Cosner was there.  2 <b>Q. And what did you ask Cosner?</b>  3 A. I just asked him -- you know, I wanted to make  4 sure that this had nothing to do with any type of -- not --  5 I guess retaliation based on the, you know, the rumors about  6 their -- their relationship.  7 <b>Q. The rumors about their relationship from</b>  8 <b>approximately eight or nine years ago?</b>  9 A. Correct.  10 <b>Q. And what did he say?</b>  11 A. That's --  12 <b>Q. And what did he say?</b>  13 A. That's exactly what he said. He said that it was  14 a very long time ago and that, no. And then, that's when he  15 was telling us, you know, I -- I followed up. I made sure,  16 you know, gave her the benefit of the doubt, but these are  17 my findings.  18 And that's when we saw his -- his write-up and all  19 his, you know, what he had done to -- to follow -- follow up  20 his allegations.  21 <b>Q. Which included talking to the officers that were</b>  22 <b>on duty that night about whether or not Jessica had actually</b>  23 <b>called them to tell them about the duty assignments,</b>  24 <b>correct?</b>  25 A. That's correct, yes.</p>
<p style="text-align: right;">43</p> <p>1 <b>Q. At any point did the Chief or Cosner talk to you</b>  2 <b>about Jessica's 2020 EEOC charge; did that ever come up?</b>  3 A. No.  4 <b>Q. Are you aware at all of the City implementing her</b>  5 <b>voluntary resignation letter and finding a violation of her</b>  6 <b>Last Chance Agreement because either the Chief or Cosner or</b>  7 <b>some other decision-maker was retaliating against her for</b>  8 <b>filing a 2020 EEOC charge?</b>  9 A. No.  10 <b>Q. Did the 2020 EEOC charge even come up in the</b>  11 <b>meeting, either -- I think I asked you this, but I'll ask it</b>  12 <b>again -- either before you met with Jessica and everyone</b>  13 <b>from the City or during the meeting with Jessica?</b>  14 A. That I recall, no.  15 <b>Q. Have you heard anything in the department that the</b>  16 <b>City implemented her letter of resignation and found a</b>  17 <b>violation of her Last Chance Agreement because she filed a</b>  18 <b>2020 EEOC charge?</b>  19 A. No.  20 <b>Q. Were you even aware of the 2020 EEOC charge at the</b>  21 <b>time of the meeting?</b>  22 A. No.  23 <b>Q. Did she make you aware of it during the meeting?</b>  24 A. That I recall? No.  25 <b>Q. Did she make you aware of it after the meeting?</b></p>	<p style="text-align: right;">44</p> <p>1 A. I don't think it was her. I think it was just  2 talked about in general.  3 <b>Q. So why didn't the FOP file a grievance on</b>  4 <b>Jessica's behalf after she was terminated?</b>  5 A. Because part of her I guess settlement or her  6 grievance was she had that last chance. There wouldn't have  7 been grounds for a grievance after the fact.  8 <b>Q. Did the FOP analyze -- you were the -- at the</b>  9 <b>time, the First Vice President, so I assume were part of the</b>  10 <b>conversations about whether a grievance was warranted,</b>  11 <b>correct?</b>  12 A. Correct.  13 <b>Q. And did the FOP analyze Jessica's situation</b>  14 <b>relative to her Last Chance Agreement and her Settlement</b>  15 <b>Agreement and the allegations against her to determine</b>  16 <b>whether or not it should file a grievance on her behalf?</b>  17 A. It was -- it was -- it was talked about. But we  18 also obviously went to this attorney, you know, to get his  19 guidance.  20 <b>Q. Yeah. I don't -- and I don't want to know what</b>  21 <b>you talked with the -- I don't want to invade the</b>  22 <b>attorney-client privilege of the FOP and its lawyer.</b>  23 A. Correct.  24 <b>Q. Because first of all, the lawyer is not here to</b>  25 <b>assert that privilege. And obviously, Gene and I go way</b></p>

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12 (Pages 45 to 48)

<p style="text-align: right;">45</p> <p>1 back. So don't tell me what you spoke to the lawyer about</p> <p>2 or what he said.</p> <p>3 Absent anything you talked about with Gene, did</p> <p>4 the FOP grievance committee analyze whether or not there was</p> <p>5 a valid grievance to file on behalf of Jessica relating to</p> <p>6 her separation from employment?</p> <p>7 A. I believe they did do that. The grievance</p> <p>8 committee did that.</p> <p>9 Q. And were you part of that?</p> <p>10 A. I was part of it.</p> <p>11 Q. And what was --</p> <p>12 A. Not of the grievance committee, but as part of --</p> <p>13 the Vice President, I was advised.</p> <p>14 Q. What was the conclusion that the FOP reached?</p> <p>15 A. That there wasn't merit for a grievance.</p> <p>16 Q. So did the FOP ultimately do anything after</p> <p>17 Jessica's termination on her behalf?</p> <p>18 A. No. No.</p> <p>19 Q. Is that because it determined there was no basis</p> <p>20 for it?</p> <p>21 A. Correct.</p> <p>22 Q. Have you ever heard or were you aware of anybody</p> <p>23 or of anybody indicating that Jessica's separation of her</p> <p>24 employment was related to or because of or had anything to</p> <p>25 do with her 2020 EEOC charge of discrimination?</p>	<p style="text-align: right;">46</p> <p>1 A. No.</p> <p>2 Q. Are you familiar with the allegations that she's</p> <p>3 made in this lawsuit?</p> <p>4 A. I am not.</p> <p>5 Q. Are you familiar, though, that at least she's</p> <p>6 alleging that the City retaliated against her and that her</p> <p>7 termination was improper retaliation; are you at least</p> <p>8 familiar with that?</p> <p>9 A. Yes.</p> <p>10 Q. And is that because we discussed it?</p> <p>11 A. Yes.</p> <p>12 MR. ELKINS: Just give me five minutes. Let's</p> <p>13 take a break for five minutes. I might be done, but I</p> <p>14 want to double-check some things.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MR. ELKINS: I'll be right back.</p> <p>17 (Recess was taken.)</p> <p>18 BY MR. ELKINS:</p> <p>19 Q. I just have one or two more questions.</p> <p>20 Are you aware of or have you heard of any sort of</p> <p>21 agreement, plot, conspiracy between FOP executive board</p> <p>22 members, like the President, you, grievance committee</p> <p>23 people, the lawyers, and city management to essentially</p> <p>24 railroad Jessica and terminate her no matter what she did?</p> <p>25 Are you -- have you ever heard anything like that?</p>
<p style="text-align: right;">47</p> <p>1 A. No.</p> <p>2 MR. BARROUKH: Objection. Compound.</p> <p>3 BY MR. ELKINS:</p> <p>4 Q. You can answer.</p> <p>5 A. No.</p> <p>6 MR. ELKINS: Nothing further.</p> <p>7 MR. BARROUKH: I do have a few questions. I'll</p> <p>8 keep it quick.</p> <p>9 CROSS EXAMINATION</p> <p>10 BY MR. BARROUKH:</p> <p>11 Q. You mentioned, Sergeant Flaherty, that you were</p> <p>12 aware of Steven Cosner's AEM; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. Did you read the AEM?</p> <p>15 A. I read it at the time.</p> <p>16 Q. Did you see if the AEM was signed?</p> <p>17 A. I don't recall right now.</p> <p>18 Q. Do you believe the AEM should be signed if it's</p> <p>19 being filed?</p> <p>20 A. I -- it -- yes.</p> <p>21 Q. Do you believe there is a problem if an AEM is</p> <p>22 filed without a signature from an officer?</p> <p>23 MR. ELKINS: Objection.</p> <p>24 THE WITNESS: Not necessarily.</p> <p>25 MR. ELKINS: Hold on. Objection to form.</p>	<p style="text-align: right;">48</p> <p>1 You can answer.</p> <p>2 BY MR. ELKINS:</p> <p>3 Q. I didn't hear your response. Could you please</p> <p>4 restate it?</p> <p>5 A. It's happened where the officer was unable to sign</p> <p>6 it.</p> <p>7 Q. And how is an AEM typically submitted?</p> <p>8 MR. ELKINS: Objection to form.</p> <p>9 You can answer.</p> <p>10 THE WITNESS: Answer?</p> <p>11 MR. ELKINS: Yeah, you can answer.</p> <p>12 THE WITNESS: Usually all -- whoever writes it in</p> <p>13 the -- the officer, everybody signs it all the way up</p> <p>14 to where -- whatever level it's going to go to.</p> <p>15 BY MR. ELKINS:</p> <p>16 Q. So the AEM typically follows the chain of command;</p> <p>17 is that correct?</p> <p>18 A. Usually, yes.</p> <p>19 Q. And now, back to the January 19th, 2021 meeting.</p> <p>20 Did the Chief tell you why she was being terminated?</p> <p>21 A. He had said that she had violated her Last Chance</p> <p>22 Agreement.</p> <p>23 Q. And are meetings like this supposed to be</p> <p>24 recorded?</p> <p>25 A. That I recall? We've never recorded one.</p>

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13 (Pages 49 to 52)

<p style="text-align: right;">49</p> <p>1 <b>Q. Do you normally record meetings regarding</b>  2 <b>grievances at the police department?</b>  3 A. None that I've been involved in, no.  4 MR. BARROUKH: All right. Thank you. That's all  5 I have.  6 THE WITNESS: That's it?  7 MR. ELKINS: I have a few followups from that.  8 THE WITNESS: Okay.  9 REDIRECT EXAMINATION  10 BY MR. ELKINS:  11 <b>Q. The fact that -- I think you testified earlier</b>  12 <b>that -- that it does happen that AEMs sometimes don't get</b>  13 <b>signed, correct?</b>  14 A. Correct.  15 <b>Q. Does the fact that it wasn't signed invalidate the</b>  16 <b>contents or the facts contained in the AEM?</b>  17 A. No.  18 <b>Q. Was the AEM reviewed by the FOP grievance</b>  19 <b>committee?</b>  20 A. Yes.  21 <b>Q. Was the AEM reviewed by the top FOP executives?</b>  22 A. Yes.  23 <b>Q. Was the AEM reviewed by the Chief based on your</b>  24 <b>knowledge?</b>  25 A. Yes.</p>	<p style="text-align: right;">50</p> <p>1 <b>Q. Was the AEM reviewed by City police management</b>  2 <b>based upon your knowledge?</b>  3 A. I would imagine, yes.  4 MR. ELKINS: Nothing further.  5 Tim, we are going to order a mini. I just want a  6 mini. And why don't I drop the exhibit in the chat for  7 you, if that will work?  8 THE REPORTER: Wonderful.  9 Sergeant, do you know if you'd like to read or  10 waive this transcript?  11 THE WITNESS: I'll read.  12 THE REPORTER: Wonderful.  13 Daniel, would you like a copy?  14 MR. BARROUKH: We'll hold off on a copy for now,  15 but I'll let you know.  16 THE REPORTER: Wonderful.  17 Michael, go ahead and send me that.  18 (Deposition concluded at 10:12 A.M.)  19  20  21  22  23  24  25</p>
<p style="text-align: right;">51</p> <p>1 CERTIFICATE OF OATH  2 STATE OF FLORIDA  3 COUNTY OF BROWARD  4 I, TIMOFEY GARBUS, Notary Public, State of Florida,  5 certify that SGT. ARLEY FLAHERTY personally appeared before  6 me via Zoom on the 28th day of March 2024 and was duly  7 sworn.  8 Signed this 28th day of March 2024.  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p> <p style="text-align: center;">TIMOFEY GARBUS  Notary Public  State of Florida  My Commission #HH 284028  Expires July 5, 2026</p>	<p style="text-align: right;">52</p> <p>1 REPORTER'S DEPOSITION CERTIFICATE  2  3 STATE OF FLORIDA )  4 COUNTY OF PALM BEACH)  5 I, TIMOFEY GARBUS, Court Reporter, certify that I was  6 authorized to and did report the Deposition of SGT. ARLEY  7 FLAHERTY; that a review of the transcript was requested; and  8 that the foregoing transcript, pages 1-50, is a true and  9 complete record of my stenographic notes.  10 I FURTHER CERTIFY that I am not a relative,  11 employee, attorney or counsel of any of the parties,  12 nor am I a relative or employee of any of the parties'  13 attorney or counsel connected with the action, nor am I  14 financially interested in the action.  15 DATED this 14th day of April 2024.  16  17  18  19  20  21  22  23  24  25</p> <p style="text-align: center;">TIMOFEY GARBUS  COURT REPORTER</p>



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14 (Pages 53 to 54)

53		54	
1	ERRATA SHEET	1	DATE: MARCH 28, 2024
2	DO NOT WRITE ON THE TRANSCRIPT - ENTER CHANGES	2	SGT. ARLEY FLAHERTY
3	IN RE: GUASTO V CITY OF MIAMI BEACH	3	ARLEYFLAHERTY@MIAMIBEACHFL.GOV
4	CASE NO: 1:22-cv-21004-DPG	4	
5	DATE: MARCH 28, 2024	5	IN RE: GUASTO V CITY OF MIAMI BEACH
6	DEPONENT NAME: SGT. ARLEY FLAHERTY	6	Deposition of Arley Flaherty
7	PAGE/LINE CORRECTION REASON	7	This letter is to advise you that the transcript
8		8	taken in the above-referenced deposition has been
9		9	transcribed. Please contact our office at (954)523-5326 to
10		10	make arrangements to read and sign or sign below to waive
11		11	review of the transcript.
12		12	It is suggested that the review of this transcript
13		13	be completed within 30 days of your receipt of this letter
14		14	as considered reasonable under Federal Rules*; however,
15		15	there is no Florida Statute to this regard.
16		16	
17	(Use other side if necessary)	17	The original of this transcript has been forwarded
18	Under penalties of perjury, I declare that I have read	18	to the ordering party and your errata, once received, will
19	the foregoing document and that the facts stated are true.	19	be forwarded to all ordering parties for inclusion in the
20		20	transcript.
21	SGT. ARLEY FLAHERTY	21	Very truly yours,
22	DATE	22	
23		23	Timofey Garbuz, Court Reporter
24		24	Waiver:
25		25	I, _____, hereby waive the reading and signing
			of my deposition transcript.
			DEPONENT DATE
			*Federal Civil Procedure Rule 30(e)Florida Civil Procedure
			Rule 1.310(e).

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9:20 17:19	48:21	<b>word</b> 16:2 20:22	<b>10:12</b> 1:15 50:18	<b>48</b> 8:16
32:10	<b>violation</b> 13:2	37:11	<b>112</b> 39:4,17 40:7	<b>49</b> 3:6
<b>understanding</b>	40:8 43:5,17	<b>words</b> 27:21	40:16	<b>5</b>
8:2 10:21	<b>violations</b> 40:16	38:5	<b>1212</b> 2:9	<b>5</b> 51:12
20:14,16 22:12	<b>voluntary</b> 43:5	<b>work</b> 17:8,12	<b>14th</b> 52:11	<b>520</b> 2:3
22:16 24:3	<b>VS</b> 1:8	18:9 50:7	<b>15</b> 24:15	<b>6</b>
<b>Understood</b>	<b>W</b>	<b>worked</b> 5:2,10	<b>16TH</b> 2:9	<b>6</b> 8:17
40:18	<b>waive</b> 16:7 50:10	20:15	<b>19</b> 31:1	<b>688-2335</b> 2:4
<b>union</b> 8:11 11:20	54:7,18	<b>works</b> 39:17	<b>19th</b> 28:2 30:10	<b>7</b>
13:12 32:7	<b>Waiver</b> 54:17	<b>world</b> 23:14	34:6 41:15	<b>786</b> 2:4
<b>unionized</b> 8:13	<b>want</b> 7:9 12:8	<b>wouldn't</b> 31:20	48:19	<b>8</b>
<b>unions</b> 11:25	26:5,16 32:23	37:8 44:6	<b>2</b>	<b>9</b>
<b>unique</b> 35:18	34:4 44:20,21	<b>WRITE</b> 53:2	<b>20</b> 5:11 8:22	<b>9:15</b> 1:15
<b>unit</b> 9:3,13,16	46:14 50:5	<b>write-up</b> 16:10	12:9,9	<b>954)401-2608</b>
10:17,22,23	<b>wanted</b> 19:16	42:18	<b>20-plus</b> 8:22	2:10
13:9 22:25	20:16,19 35:25	<b>writes</b> 48:12	<b>2014</b> 24:14	<b>954)523-5326</b>
32:7 34:25	36:5 42:3	<b>written</b> 14:18	<b>2015</b> 9:18	54:7
<b>UNITED</b> 1:3	<b>wants</b> 14:3	27:2 33:22	<b>2020</b> 12:9 43:2,8	
<b>use</b> 18:3 53:17	<b>warranted</b> 44:10	<b>wrong</b> 10:22	43:10,18,20	
<b>usually</b> 11:21	<b>wasn't</b> 14:15	<b>X</b>	45:25	
13:3,20,20	36:11 37:12	<b>X</b> 3:1,8	<b>2021</b> 12:9 26:8	
14:9 16:18	39:12 45:15	<b>Y</b>	27:13,15,20,24	
18:3 48:12,18	49:15	<b>yeah</b> 28:23	28:2,14,20,24	
<b>V</b>	<b>way</b> 7:22 44:25	32:11 35:13	30:10 31:1	
<b>V</b> 53:3 54:4	48:13	41:19 44:20	34:6 48:19	
<b>vague</b> 29:20	<b>Wayne</b> 28:3	48:11	<b>2022</b> 12:7,9	
30:3,5	34:14	<b>year</b> 5:11 12:6	<b>2024</b> 1:14 12:7	
<b>valid</b> 45:5	<b>we'll</b> 8:20 14:20	28:13	51:6,8 52:11	
<b>verbal</b> 27:3	14:20 28:25	<b>years</b> 5:11 8:22	53:4 54:1	
<b>vice</b> 9:4 11:15	50:14	8:23,24 9:3,9	<b>2026</b> 51:12	
12:3,4,5,11,12	<b>we're</b> 9:11	9:14,15 11:18	<b>28</b> 1:14 53:4	
12:13,18,19	<b>We've</b> 48:25	42:8	54:1	
13:21 28:12,15	<b>week</b> 7:16	<b>Z</b>	<b>284028</b> 51:12	
31:23,23,25	<b>went</b> 9:8,9 38:2	<b>Zoom</b> 1:16 51:6	<b>28th</b> 51:6,8	
34:16,17 35:1	38:8 44:18	<b>0</b>	<b>3</b>	
35:2,6 37:16	<b>witness</b> 3:2 4:5	<b>1</b>	<b>30</b> 54:9	
37:16 40:20,20	4:17 23:6	<b>1</b> 3:10 33:15,16	<b>30(e)Florida</b>	
44:9 45:13	46:15 47:24		54:21	
<b>video</b> 6:20	48:10,12 49:6		<b>33</b> 3:10	
<b>view</b> 39:23	49:8 50:11		<b>33131-2433</b> 2:4	



MIAMI BEACH  
**POLICE**

## MEMORANDUM

TO: Sergeant, Jessica Salabarría

FROM: Rick Clements, Chief of Police 

DATE: January 25, 2021

RE: Implementing Letter of Resignation

---

On December 18, 2020, you entered into a Last Chance Agreement (“Agreement”). A copy of that Agreement is attached as Exhibit A. Additionally, as part of the Agreement, on that same date you signed a Letter of Resignation (“Resignation”). A copy of that Resignation is attached as Exhibit B.

Based on the violations outlined below, and per the Agreement, I am implementing the Resignation, effective immediately and as of the date indicated on Resignation attached as Exhibit B.

Specifically, on December 30, 2020, Lieutenant, Steven Cosner submitted an Allegation of Employee Misconduct (“AEM”). A copy of the AEM is attached as Exhibit C. The allegations of the AEM are incorporated in full herein.

On January 19, 2021, I held a meeting with you to discuss the allegations in the AEM. In addition to you and I, also present at that meeting was:

- Wayne Jones, Deputy Chief
- Paul Ozaeta, Lieutenant (FOP President)
- Arley Flaherty, Sergeant (FOP First Vice President)
- Reggie Lester, Sergeant (FOP Second Vice President)
- Delvin Brown, Lieutenant (FOP Grievance Chairman)
- Steven Cosner, Lieutenant
- A.J. Prieto, Captain Internal Affairs.

During the meeting, you were provided a copy of the “AEM” and given the opportunity to review the “AEM” in full. After your review, you informed me that, despite being assigned to the North District, you did not report to the North District. Instead, you remained in your assigned City vehicle, stationary at the City’s main police station. You further informed me that while in your vehicle at the police station (for what was at or around four (4) plus hours) you worked on administrative issues (an employee evaluation

for Police Officer Vincent Stella) and worked on your “school work.” The “school work” at issue is not work assigned by the City. You informed me that, independent from the City, you are working toward a Master’s Degree.

Further, you acknowledged that you missed two radio calls specifically to you from Lieutenant Cosner and a phone call from Lieutenant Cosner to your personal cell phone. Ultimately, you did not respond to the North End Sub-Station (in the North District) until approximately 4:20 a.m., and only after being told to do so by Lieutenant Cosner. You further acknowledged that despite receiving an email from Lieutenant Cosner at approximately 3:20 a.m. directing you to have certain officers perform certain assignments, you did not issue the assignments until after 4:20 a.m., and only after speaking with Lieutenant Cosner. You again indicated to me that prior to speaking to Lieutenant Cosner at 4:20 a.m., you were focused on the employee evaluation and your independent school work.

In speaking with Lieutenant Cosner during this meeting, he indicated, among other things that you informed him that you had conveyed the assignment details, when in fact, you had not. You conveyed the assignment details after speaking to Lieutenant Cosner despite telling him you had already done so.

Moreover, Lieutenant Cosner indicated in this meeting that you did not leave the main police station during most of your shift and only left the police station when instructed to do so by Lieutenant Cosner.

The above is only a summary of the events of the January 19, 2021 meeting.

After the meeting, the City reviewed your City issued laptop computer, which is the computer that you would have used to work on Officer Stella’s evaluation. A review of the laptop shows that Officer Stella’s evaluation was not created until January 10, 2021. The City’s Information Technology Department confirmed that Officer Stella’s evaluation was not created or saved anywhere else on the City’s system.

Pursuant to paragraph 4 of the Agreement, I determine that you have not complied with the Agreement and engaged in conduct that is beyond an individual, discreet or minor policy violation. Pursuant to paragraph 4 of the Agreement, my decision in this regard is not subject to review or explanation. Accordingly, as stated above, I am implementing your Resignation.

# EXHIBIT A

**LAST CHANCE AGREEMENT**

THIS LAST CHANCE AGREEMENT is entered into between the CITY OF MIAMI BEACH, FLORIDA (hereinafter, the "City"), FRATERNAL ORDER OF POLICE, (hereinafter, "the Union") and JESSICA SALABARRIA (hereinafter, "SALABARRIA" or "Employee").

WHEREAS, SALABARRIA is employed by the City as a Police Officer in the City's Police Department.

WHEREAS, SALABARRIA is subject to the terms and conditions of employment contained in the Collective Bargaining Agreement between the Union and the City effective October 1, 2018 through September 30, 2021;

WHEREAS, SALABARRIA is the subject of an Internal Affairs ("IA") Investigation, IA Case Number 2020-010, which arose from SALABARRIA's involvement in not being on-duty when she was supposed to be, and from SALABARRIA's claims of being on-duty in the City when she was actually outside the City;

WHEREAS, the City wishes to continue to employ Employee, Employee wishes to continue to be employed by the City, and the FOP desires for Employee to continue to be employed under the terms and conditions described herein; and

WHEREAS, the Employee admits that she committed misconduct in association with IA Case Number 2020-010 and was in violation of numerous City and Police Department policies and the City Personnel Rules for the Classified Service; and

WHEREAS, the purposes of this Agreement, with which all the Parties concur, include: to protect and preserve the integrity of the Police Department and all its officers and to give Employee the opportunity to further and support that purpose; and to give Employee the

  
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JESSICA

City 001256



opportunity to rehabilitate herself personally and as a police sergeant for the City and this Department; and to give Employee an opportunity to preserve her career.

NOW, THEREFORE, without establishing precedent for any purpose and intending to be bound, the Parties agree as follows:

1. All of the above statements are true and correct to the best of the Parties' belief and knowledge and for a five (5) year period beginning with the execution of this Agreement by all parties, SALABARRIA will be subject to the provisions of this Agreement.

2. During this period, SALABARRIA must be on-duty and in the City limits during all of her scheduled shifts unless given prior authorization. For the avoidance of confusion, this means that, during the terms of this Agreement, SALABARRIA shall not be outside the City limits when she is on-duty, shall not tell the City she's on-duty when she is outside the City's limits, and shall not leave before the end of her scheduled shift, unless given prior authorization.

3. Additionally, SALABARRIA shall refrain from violating any City or Police Department policies, rules or regulations; Standard Operating Procedures ("SOPs") or Personnel Rules, all of which (including any amendments or additions) are incorporated herein by reference. In any instance during which City or Police Department policies, procedures or Personnel Rules differ from or conflict with the stipulations set forth in the applicable collective bargaining agreement, the City or Police Department policies, procedures or Personnel Rules shall prevail.

4. The Chief of Police shall exclusively assess and determine Employee's compliance with this Agreement. The Chief's decision as to compliance with this Agreement shall not be subject to any grievance and/or review of any kind by SALABARRIA and/or the Union and is not subject to explanation or review.

  
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JESSICA

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5. Failure to comply with any portion or requirement of this Agreement (including but not limited to the requirement not to violate any City or Police Department policies, Standard Operating Procedures ("SOPs") or Personnel Rules, as referenced in paragraph 3 above) may result in the immediate implementation of the attached letter of resignation as referenced in paragraph 9 below. It is the intent and understanding of the parties that the violations contemplated to trigger the implementation of the attached letter of resignation shall not be for individual, discreet minor policy and procedural violations. The parties agree that repeated violation of the same, discreet minor policy may result in an event triggering the implementation of the attached letter of resignation. In that event, the Employee and the Union understand and agree there will be no recourse or review available pursuant to any grievance, appeal or review process under any federal, state or local statute, ordinance, collective bargaining agreement, or in any other forum or under any other process or procedure.

6. SALABARRIA shall serve a four-week (160 hour) suspension without pay and waive any and all rights to grieve or appeal that suspension. Employee shall also be subject to the additional provisions of the Settlement Agreement to which this Agreement is attached and is made part of via incorporation by reference.

7. Further, for the same five (5) year period described above, the Chief of Police shall have full discretion regarding Employee's assignments, including, without limitation, duties, supervisor and chain of command. Employee shall have the ability to bid for shift and days off, if the employee is reassigned her duty hours and days off shall remain the same.

8. For a period of one (1) year from the date of execution of this Agreement, Employee is not eligible for any promotional opportunities.

  
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JESSICA

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9. Employee shall sign an irrevocable letter of resignation which shall take effect immediately upon her violation of this Agreement or any part of it at any time during the term of this Last Chance Agreement. .

10. Employee shall attend and cooperate with any training required by the Chief of Police.

11. If during the above-referenced five (5) year period, SALABARRIA violates any provisions of this agreement or any City or Police Department policies, Standard Operating Procedures ("SOPs") or Personnel Rules and/or regulations as previously referenced in paragraph #4 , her resignation shall be effective , without the right to grieve or otherwise contest, in any manner, her separation. .

12. In the event that SALABARRIA is separated pursuant to the terms and conditions of this Last Chance Agreement, she and the Union understand that her separation is not subject to appeal pursuant to the contractual grievance/arbitration procedure, or otherwise. In other words, SALABARRIA agrees that should she be separated pursuant to the terms of this agreement that she waives her right to utilize the contractual grievance and arbitration procedure and she further waives the right to challenge or appeal her separation pursuant to any administrative or statutory avenue that may exist.

13. The City retains the right to rely upon the facts and circumstances of the events from which this Last Chance Agreement arose in any future proceeding in the event the Employee successfully meets the terms and conditions referred to in this Agreement but thereafter has deficiencies in conduct or performance, and such deficiencies shall be sufficient to warrant discipline, including dismissal.



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14. It is understood and agreed by all parties hereto that this Last Chance Agreement is executed based on the particular circumstances of this case and does not establish precedent for the resolution of other cases.

15. SALABARRIA acknowledges that she could be terminated from her employment from the City as a result of her conduct as referenced above and that remaining employed by the City is adequate consideration for entering into this Last Chance Agreement, serving the suspension without pay and waiving the rights described herein and in the Settlement Agreement.

16. SALABARRIA being of lawful age, for and in consideration of the above-action agreed to by the City, and other valuable consideration received from or on behalf of the City, receipt whereof is hereby acknowledged, does hereby release, acquit, satisfy and forever discharge the City, as well as each and everyone of the City's former and current officers, agents, attorneys, employees and officials -- in both their official and individual capacities -- and their successors and assigns, from any and all claims, cause and causes of action, grievances, unfair labor practice charges, lawsuits, claims of employment discrimination (including, but not limited to claims under the Americans With Disabilities Act), and any and all other claims and demands whatsoever, in law or in equity, tort or contract, which SALABARRIA has or may have against the above-named individuals in both their individual and official capacities, from the beginning of the world until today, including, but not limited to, all matters concerning or arising out of her employment with the CITY, her discipline stemming from the incidents described in this Last Chance Agreement and the execution of this Last Chance Agreement.

17. It is understood and agreed that this Last Chance Agreement does not constitute an admission by the City or SALABARRIA of any violation of the collective bargaining

  
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JESSICA

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agreement. This Last Chance Agreement is being entered into by the parties solely for the purpose of avoiding the expense and inconvenience of further administrative proceedings.

18. SALABARRIA has received and reviewed this Last Chance Agreement prior to executing it and she agrees to be bound by its terms and conditions.

19. Prior to signing this Last Chance Agreement, SALABARRIA had the opportunity, and did, in fact, consult with her attorney and/or with the Union.

20. This Last Chance Agreement, and the Settlement Agreement which is attached constitutes the entire understanding and agreement of the parties hereto, and can be modified, amended or revoked only by express written consent of all parties.

21. This Last Chance Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and where applicable, federal laws. The language of this Last Chance Agreement shall be construed as a whole, according to its fair meaning, and not strictly construed for or against either party.

22. In the event that any party to this Last Chance Agreement institutes legal proceedings regarding the terms of this Last Chance Agreement, it is stipulated and agreed that such a claim shall be heard and determined by the court, and not by a jury, in Miami-Dade County, Florida. **SALABARRIA AGREES AND UNDERSTANDS THAT SHE IS WAIVING THE RIGHT TO A JURY TRIAL, IF ONE EXISTS, AS TO ANY CLAIM REGARDING THE TERMS OF THIS AGREEMENT.**

  
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JESSICA

City 001261

This Agreement is dated the \_\_\_\_ day of December 2020, in Miami-Dade County, Florida.

  
\_\_\_\_\_  
JESSICA SALABARRIA

DocuSigned by:  
Paul J. Aguilera  
\_\_\_\_\_  
2B3D6240F92B45D...  
CITY MANAGER  
CITY OF MIAMI BEACH

Date: 12/18/2020

Date: 12/23/2020 | 1:34 EST

FRATERNAL ORDER OF POLICE

  
\_\_\_\_\_  
Signature & Title

Kevin Millan President  
\_\_\_\_\_  
Print Name & Title

12/18/2020  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
CHIEF OF POLICE

12/18/2020  
\_\_\_\_\_  
Date



# EXHIBIT B

December 18, 2020

City of Miami Beach  
Human Resources Department  
Miami Beach City Hall  
1700 Convention Center Drive  
Miami Beach, FL 33139

Re: *Letter of Resignation as Part of Settlement Agreement and Last Chance Agreement*

To Whom It May Concern:

Pursuant to the Settlement Agreement and Last Chance Agreement to which this Letter of Resignation is attached, I resign my employment with the City of Miami Beach, effective

January 25, 2021.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Jessica Salabarria", with a stylized flourish at the end.

Jessica Salabarria.

# EXHIBIT C

MIAMI BEACH POLICE DEPARTMENT				
Initial Report Concerning a Police Employee - Allegation of Employee Misconduct				
Date and Time Reported 12/30/2020 2345 hours	Received By (Employee Name) Lieutenant Steven Cosner		( X ) In Person ( ) By Phone ( ) Other _____	
Date and Time Occurred 12/28/2020 0000-0600 hours	Location of Occurrence MBPD			
Reporting Party's Name Lieutenant Steven Cosner	Race/Sex W/M	D.O.B	Address: 1100 Washigton Ave., Miami Beach, Florida 33139	Telephone #
Specific Allegation (In Brief): Failure to Supervise, Conduct Unbecoming, Insubordination, Neglect of Duty, Untruthfulness (lying/false statements), Performance of Duties, Failure to Monitor Radio				
Employee (s) Name		3.		
1. Sergeant Jessica Salabarria				
2.		4.		
Witnesses				
Name	Race/Sex	D.O.B	Address	Telephone
Lieutenant Steven Cosner	W/M		Resident: MBPD	
Officer Werner Baumer	W/M		Business: 1100 Washington Ave., Miami Beach,	
Officer Richard Ocejo	W/M		FL 33139	
Officer Steven Serrano	W/M			
Officer Christopher Garrido	W/M			
Officer Hansel Romero	W/M			
Officer Rodolfo Albaladejo	W/M			
			Resident	
			Business	
Details of Allegation				
<p>On Sunday night, 12/27/2020 at approximately 2200 hours, I advised Sergeant Jessica Salabarria that we needed a Sergeant on overtime for the midnight shift. I told her that she was the next supervisor to be forced to work over since we did not have any volunteers for the position. She was told that she would be assigned to Area 3 and would be working from 0000-0600 hours. She acknowledged the order and within several minutes she provided me with an overtime slip completed by her in which she documented in her own handwriting that she was working in Area 3. She left the sergeant's office shortly thereafter. At approximately 0355 hours, I forwarded an email to Sergeant Salabarria with the details and watch orders that needed to be assigned to the Area 3 officers for completion prior to the end of their shift. I then sent a text message to her cellular phone advising her to check her email at 0359 hours. After a few minutes I did not receive an acknowledgement of the text message, so I tried to call her phone at 0404 hours. Then phone rang repeatedly and went to voicemail. I tried to raise her via the police radio immediately afterwards. The dispatcher raised her multiple times with no response. Sergeant Wilson Romero advised via radio that he would try to call her. He called me at 0411 hours to advise that he could not reach her and that her phone rang through to voicemail. I again tried to have the dispatcher raise her, and after several attempts by name and unit</p>				

number, she finally responded. The tone of her voice sounded as if she was just waking up. I spoke with her via the supervisor channel and asked her where she was. She told me that she was "05". I responded by asking if she meant, "05 at the NESS". She said no and that she was at the main station. I asked if she was aware that she was assigned to Area 3 and she answered affirmatively. I then ordered her to respond to Area 3 and to check her email.

I became involved in a vehicle stop along 71 street that resulted in an arrest at 0416. Officer Ocejio was one of the officers who responded as back-up. After the subject was transported, I waited on scene with Officer Ocejio as he waited for a tow truck. I asked Officer Ocejio to check his email to see if the details had been forwarded by Sergeant Salabarría. He told me that he did not have any emails from her. This was at approximately 0520 hours. At 0543 hours, I received an unsolicited text message from Sergeant Salabarría advising that she had emailed me the squad stats and the detail assignments. She claimed that she had told the officers via landline and email of their detail assignments. The email that she sent me was sent at 0536 hours. It included the squad stats and detail assignments. I called Officer Hansel Romero and asked him if he had received any emails, texts, or phone calls from Sergeant Salabarría advising him of detail assignments. He said that he did not and that she had only asked for stats in an email that was sent at 0521 hours. That email was forwarded to me by Officer Ocejio. I began calling all the officers assigned to Area 3 and inquired the same of each of them. Every one of the officers advised that they had not received a call or text advising of the details. Officer Romero then forwarded an email that he received from Sergeant Salabarría at 0542 hours. The email had been sent to each of the Area 3 officers. It was the detail assignments and began with a highlighted line stating, "squad per our conversation please note the below details for our shift". I found this very concerning because it was now the second time that she had claimed to have had a conversation with the officers about their assignments when all six of them claimed that never happened and they did not report to any assigned details during the shift.

I sent an email to Lieutenant Jorge Garcia asking for a Detail Report for Sergeant Salabarría's assigned marked vehicle via the AVL system. My inquiry was for her vehicle movement from 2200 hours on 12/27/2020 through 0600 hours on 12/28/2020. The Detail Report showed that her vehicle had been parked at the station from 2200 hours on 12/27/2020 until 0423 hours on 12/28/2020 which was a few minutes after we spoke on the supervisor channel. For a total of 6 hours and 23 minutes. It is unknown how long the vehicle had been parked prior to that. The report indicated that she left the station and drove directly to 73rd Street and Ocean Terrace where she again parked her vehicle at 0440 hours. The vehicle remained in that position until 0533 hours for a total of 53 minutes. She then left that location and drove directly to the MBPD headquarters.

Note that of the six officers assigned to Area 3 on the shift in question 4 of them have 2 years of experience or less.

Sergeant Salabarría's actions show a willful effort to deceive a supervisor and a failure to obey a direct order from said supervisor. She failed to report to her assigned zone and failed to supervise the officers under her watch. She failed on multiple occasions to respond to the police radio and showed extreme neglect in the performance of her duties.